

JOHN SPELLMAN
Governor



4.0
DONALD W. MOOS
Director

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Mail Stop PV-11 • Olympia, Washington 98504 • (206) 459-6000

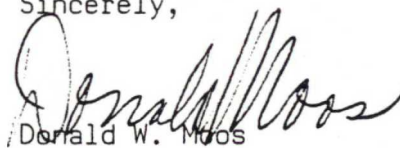
November 10, 1983

Mrs. Ernesta B. Barnes
Regional Administrator
U.S. Environmental Protection Agency
Region X
1200 Sixth Avenue
Seattle, WA 98101

Dear Mrs. Barnes:

Enclosed is the cooperative agreement Initial Remedial Measure (IRM) on the Western Processing superfund site. We appreciate the assistance provided by your staff during the preparation of this document. We are looking forward to full approval of the agreement so that implementation can begin before December 1, 1983.

Sincerely,



Donald W. Moos
Director

DWM:js

Enclosure

cc: John F. Spencer
Lynda L. Brothers
Bruce Cameron
Al Ewing

USEPA SF



1518498

STATE AND LOCAL NONCONSTRUCTION PROGRAMS

OMB Approval No. 80-R0180

| FEDERAL ASSISTANCE | | 2. APPLICANT'S APPLICATION | a. NUMBER | 3. STATE APPLICATION IDENTIFIER | a. NUMBER |
|--|--|------------------------------|---|---------------------------------|--|
| 1. TYPE OF ACTION (Mark appropriate box) <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION <input type="checkbox"/> NOTIFICATION OF INTENT (Opt.) <input type="checkbox"/> REPORT OF FEDERAL ACTION | | b. DATE Year month day 19 | | | 91-3-8-3 Year month day 1983 8 9 |
| 4. LEGAL APPLICANT/RECIPIENT a. Applicant Name : State of Washington b. Organization Unit : Department of Ecology c. Street/P.O. Box : Mail Stop PV-11 d. City : Olympia e. County : Thurston f. State : Washington g. ZIP Code: 98504 h. Contact Person (Name & telephone No.) : Lynda L. Brothers (206) 459-6253 | | | 5. FEDERAL EMPLOYER IDENTIFICATION NO. 91-60000163 | | |
| 7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT Western Processing IRM Implementation | | | 6. PRO-GRAM (From Federal Catalog) a. NUMBER 198 15 11 0 b. TITLE CERCLA | | |
| 10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.) Kent - King County | | | 8. TYPE OF APPLICANT/RECIPIENT A - State B - Interstate C - Substate D - County E - City F - School District G - Special Purpose District H - Community Action Agency I - Higher Educational Institution J - Indian Tribe K - Other (Specify): Enter appropriate letter [A] | | |
| 11. ESTIMATED NUMBER OF PERSONS BENEFITING 23,000 | | | 9. TYPE OF ASSISTANCE A - Basic Grant B - Supplemental Grant C - Loan D - Insurance E - Other Enter appropriate letter(s) [A] | | |
| 12. TYPE OF APPLICATION A - New B - Renewal C - Revision D - Continuation E - Augmentation Enter appropriate letter [A] | | | 13. PROPOSED FUNDING a. FEDERAL \$ 607,573 .00 b. APPLICANT .00 c. STATE 67,508 .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$ 675,081 .00 | | |
| 14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT Third b. PROJECT Eighth | | | 15. TYPE OF CHANGE (For 12 c or 12 e) A - Increase Dollars B - Decrease Dollars C - Increase Duration D - Decrease Duration E - Cancellation F - Other (Specify): Enter appropriate letter(s) [] [] [] | | |
| 16. PROJECT START DATE Year month day 1983 12 | | | 17. PROJECT DURATION 24 Months | | |
| 18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY 1983 11 10 | | | 19. EXISTING FEDERAL IDENTIFICATION NUMBER NA | | |
| 20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code) U.S. Environmental Protection Agency, Region X | | | 21. REMARKS ADDED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | |
| 22. THE APPLICANT CERTIFIES THAT a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved. b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached. (1) State Clearinghouse (2) Local Clearinghouse | | | No response Response attached <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> | | |
| 23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE Donald W. Moos, Director b. SIGNATURE John F. Senner, Jr. | | | c. DATE SIGNED Year month day 1983 11 10 | | |
| 24. AGENCY NAME | | | 25. APPLICATION RECEIVED 19 | | |
| 26. ORGANIZATIONAL UNIT | | | 27. ADMINISTRATIVE OFFICE | | |
| 28. FEDERAL APPLICATION IDENTIFICATION | | | 29. ADDRESS | | |
| 30. FEDERAL GRANT IDENTIFICATION | | | 31. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. DEFERRED <input type="checkbox"/> e. WITHDRAWN | | |
| 32. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00 | | | 33. ACTION DATE 19 | | |
| 34. STARTING DATE 19 | | | 35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) | | |
| 36. ENDING DATE 19 | | | 37. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| 38. FEDERAL AGENCY A-95 ACTION a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made. b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.) | | | | | |

424-102

STANDARD FORM 424 PAGE 1 (Rev. 4-77)
Prescribed by OMB Circular A-102

PART II

PROJECT APPROVAL INFORMATION

Item 1.

Does this assistance request State, local, regional, or other priority rating?

_____ Yes ☒ No

Name of Governing Body _____
Priority Rating _____

Item 2.

Does this assistance request require State, or local advisory, educational or health clearances?

_____ Yes ☒ No

Name of Agency or Board _____

(Attach Documentation)

Item 3.

Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?

☒ Yes _____ No

(Attach Comments)

Item 4.

Does this assistance request require State, local, regional or other planning approval?

_____ Yes ☒ No

Name of Approving Agency _____
Date _____

Item 5.

Is the proposed project covered by an approved comprehensive plan?

_____ Yes ☒ No

Check one: State ☐
Local ☐
Regional ☐

Location of Plan _____

Item 6.

Will the assistance requested serve a Federal installation?

_____ Yes ☒ No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 7.

Will the assistance requested be on Federal land or installation?

_____ Yes ☒ No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 8.

Will the assistance requested have an impact or effect on the environment?

☒ Yes _____ No

See instructions for additional information to be provided.

Item 9.

Has the project for which assistance is requested caused, since January 1, 1971, or will it cause, the displacement of any individual, family, business, or farm?

_____ Yes ☒ No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.

Is there other related assistance on this project previous, pending, or anticipated?

☒ Yes _____ No

See instructions for additional information to be provided.

Item 11.

Is project in a Designated Flood Hazard Area?

_____ Yes ☒ No

PART III—BUDGET INFORMATION

SECTION A—BUDGET SUMMARY

| GRANT PROGRAM, FUNCTION OR ACTIVITY (a) | FEDERAL CATALOG NO. (b) | ESTIMATED UNOBLIGATED FUNDS | | NEW OR REVISED BUDGET | | |
|---|-------------------------------|-----------------------------|--------------------|-----------------------|--------------------|--------------|
| | | FEDERAL (c) | NON-FEDERAL (d) | FEDERAL (e) | NON-FEDERAL (f) | TOTAL (g) |
| 1. Implementation IRM | 66,802 | \$ | \$ | \$ 607,573 | \$ 67,508 | \$ 675,081 |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | \$ | \$ | \$ 607,573 | \$ 67,508 | \$ 675,081 |

SECTION B—SCHEDULE A BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | TOTAL (5) |
|-------------------------------------|-------------------------------------|-----|-----|-----|--------------|
| | Implementation (1) IRM | (2) | (3) | (4) | |
| a. Personnel | \$ 11,493 | \$ | \$ | \$ | \$ 11,493 |
| b. Fringe Benefits | 2,418 | | | | 2,418 |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | 500 | | | | 500 |
| f. Contractual | 655,268 | | | | 655,268 |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges | 669,679 | | | | 669,679 |
| j. Indirect Charges 47% of salaries | 5,402 | | | | 5,402 |
| k. TOTALS | \$ 675,081 | \$ | \$ | \$ | \$ 675,081 |
| 7. Program Income | \$ | \$ | \$ | \$ | \$ |

SECTION B - SCHEDULE B - BUDGET CATEGORIES

| 6. Program Elements | FUNDING | | | (4) MAN- YEARS |
|---------------------------|-------------|-----------------|------------|----------------------|
| | (1) FEDERAL | (2) NON-FEDERAL | (3) TOTAL | |
| a. Implementation IRM | \$ 607,573 | \$ 67,508 | \$ 675,081 | .375 |
| b. | | | | |
| c. | | | | |
| d. | | | | |
| e. | | | | |
| f. | | | | |
| g. | | | | |
| h. | | | | |
| i. Total Program Elements | \$ 602,171 | \$ 67,508 | \$ 669,679 | .375 |
| j. STATE TOTAL | \$ 5,402 | \$ | \$ 5,402 | |

Task 1 Procure Construction Services \$ 2,000

Task 2 Construction 563,268

Task 3 Project Management 12,411

Task 4 Community Relations 0

Task 5 Operation and Maintenance 92,000

Indirect 5,402

TOTAL \$675,081

SECTION C—NON-FEDERAL RESOURCES

| (a) GRANT PROGRAM | (b) APPLICANT | (c) STATE | (d) OTHER SOURCES | (e) TOTALS |
|-------------------|---------------|-----------|-------------------|------------|
| 8. | \$ | \$ | \$ | \$ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS | \$ | \$ | \$ | \$ |

SECTION D—FORECASTED CASH NEEDS

| | TOTAL FOR 1st YEAR | 1st QUARTER | 2nd QUARTER | 3rd QUARTER | 4th QUARTER |
|-----------------|--------------------|-------------|-------------|-------------|-------------|
| 13. Federal | \$ 566,173 | \$ 534,607 | \$ 10,522 | \$ 10,522 | \$ 10,522 |
| 14. Non-Federal | 62,908 | 59,134 | 1,258 | 1,258 | 1,258 |
| 15. TOTALS | \$ 629,081 | \$ 593,741 | \$ 11,780 | \$ 11,780 | \$ 11,780 |

SECTION E—BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) GRANT PROGRAM | FUTURE FUNDING PERIODS (YEARS) | | | |
|------------------------|--------------------------------|------------|-----------|------------|
| | (b) FIRST | (c) SECOND | (d) THIRD | (e) FOURTH |
| 16. Implementation IRM | \$ 46,000 | \$ | \$ | \$ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS | \$ 46,000 | \$ | \$ | \$ |

SECTION F—OTHER BUDGET INFORMATION
(Attach Additional Sheets If Necessary)

21. Direct Charges:

22. Indirect Charges:

EPA approved indirect rate is 52.11% of salaries. See attachment. For the purpose of this agreement, the Department of Ecology is using an indirect rate of 47% of salaries.

23. Remarks:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 26 9 16 AM '83

May 16, 1983

Ms. Nancy Stevenson
Division Supervisor
Financial and Administrative
Services
State of Washington
Department of Ecology
Mail Stop PV-11
Olympia, Washington 98504

Dear Ms. Stevenson:

Enclosed is a negotiation agreement reflecting an understanding reached between you and Mr. William Cooke of my staff, concerning indirect cost rates to be used on grants and contracts with the Federal Government.

I have already signed the agreement. Please have the agreement countersigned by a duly authorized representative of your organization. Photocopy the agreement for your files and return the original to me. Please give this matter your immediate attention.

Return the countersigned original agreement to me addressed as follows:

Mr. John J. Zabretsky
Chief, Cost Policy and Rate Negotiation Section
Cost Review and Policy Branch (PM-214-F)
Environmental Protection Agency
Fairchild Building
Washington, D. C. 20460

Should you have any further questions regarding the negotiation agreement, contact Mr. Cooke on (202) 382-3226.

Sincerely yours,

A handwritten signature in cursive script that reads "John J. Zabretsky".

John J. Zabretsky
Chief, Cost Policy and Rate Negotiation Section
Cost Review and Policy Branch (PM-214-F)

Enclosure

OMB CIRCULAR A-87 COGNIZANT AGENCY
NEGOTIATION AGREEMENT

Page 1 of 2

State of Washington
Department of Ecology
Olympia, Washington

Date: May 16, 1983

Filing Ref: This Updates
Agreement Dated
December 1, 1981

The indirect cost rates contained herein are for use on grants and contracts with the Federal Government to which Office of Management and Budget Circular A-87 applies, subject to the limitations contained in the Circular and in Section II, A, below.

SECTION I: RATES

| <u>Type</u> | <u>Effective Period</u> | | <u>Rate</u> | <u>Base</u> |
|-------------|-------------------------|-----------|-------------|-------------|
| | <u>From</u> | <u>To</u> | | |
| Provisional | 7/1/82 | 6/30/83 | 36.07% | (a) |
| Provisional | 7/1/83 | 6/30/84 | 52.11% | (b) |

Basis for Application (See Special Remarks):

- (a) Total direct costs excluding capital expenditures, equipment purchases and "flow through" funds to local agencies
- (b) Direct salaries and wages

Treatment of Fringe Benefits: Fringe benefits applicable to direct salaries and wages are treated as direct costs.

SECTION II: GENERAL

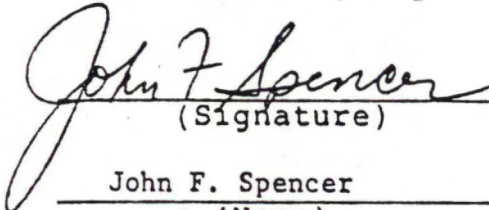
- A. LIMITATIONS: Use of the rates contained in this agreement is subject to any applicable statutory limitations. Acceptance of the rates agreed to herein is predicated upon the conditions:
- (1) that no costs other than those incurred by the grantee/contractor were included in the indirect cost rate proposal and that such costs are legal obligations of the grantee/contractor,
 - (2) that the same costs that have been treated as indirect costs have not been claimed as direct costs, and
 - (3) that similar types of costs have been accorded consistent treatment.

State of Washington
Department of Ecology
Olympia, Washington

- B. NOTIFICATION TO FEDERAL AGENCIES: Copies of this document may be provided to other Federal Agencies as a means of notifying them of the agreement contained herein.
- C. SPECIAL REMARKS: Effective July 1, 1983, the allocation base will change from total direct costs excluding capital expenditures, equipment purchases, and "flow-through" funds to direct salaries and wages. If needed, the cognizant agency will resolve any problems resulting from this transition pertaining to previously-awarded programs with costs incurred both before and after the transition period.

ACCEPTANCE

By the State Agency:


(Signature)

John F. Spencer
(Name)

Deputy Director
(Title)

Department of Ecology
(Agency)

May 26, 1983
(Date)

By the Responsible Federal Agency:


(Signature)

John J. Zabretsky
Chief, Cost Policy and Rate
Negotiation Section
Environmental Protection Agency
May 16, 1983

Negotiated by: William Cooke
Telephone: (202) 382-3226

PROJECT NARRATIVE STATEMENT

Site Description

Western Processing Company, Incorporated (hereinafter referred to as Western Processing) is located in the City of Kent, King County, Washington. The facility covers an area of approximately 13 acres. Facility operations were conducted on approximately 11 of the 13 acres. The general land use around the site is commercial and industrial with some agricultural activities and a few isolated residential structures.

Mill Creek, also known as King County Drainage Ditch No. 1, runs across the northwest corner of the site from south to north. Along the eastern boundary, a bicycle trail/jogging path occupies a former railroad right-of-way, along which runs a high voltage power line and a drainage ditch. Beyond these to the east are the tracks of the Chicago-Milwaukee-St. Paul and Pacific and the Burlington-Northern railroads. Access is from South 196th Street along the northern boundary. The site is bounded on the west by McDonald Industries and on the south by an underdeveloped area. Figure 1 shows the most recent site plan.

Background

Western Processing was an industrial waste recycling and reclamation facility which began operations in 1961. The site is located in Kent, Washington, south of Seattle in an area of recently developed light industry and is in Group I of the National Priorities List. Principle operations included solvent recovery, acid and caustic neutralization, heavy metal precipitation, and storage of hazardous wastes. Sampling efforts conducted by local, state and federal agencies revealed in January 1983 high concentrations of metals in surface water on and adjacent to the site. On April 18, 1983 a CERCLA emergency removal began and was completed July 1, 1983. During the emergency thousands of gallons of bulk and barreled waste were removed from the site. Some soils, which remain on site, have failed EP toxicity tests and therefore must be considered hazardous wastes. Additionally, approximately 10,000 tons of flue dust and 4-5,000 tons of battery chips remain on the site. These materials were not removed during the emergency because site containment was considered the purpose of an immediate removal not site clean-up. The Washington State Department of Ecology (DOE) has also acted on their own to further stabilize those areas of the site that would be unworkable after heavy rains. The activities that DOE performed between October 5, 1983 and November 18, 1983 were necessary in addition to the proposed Initial Remedial Measure.

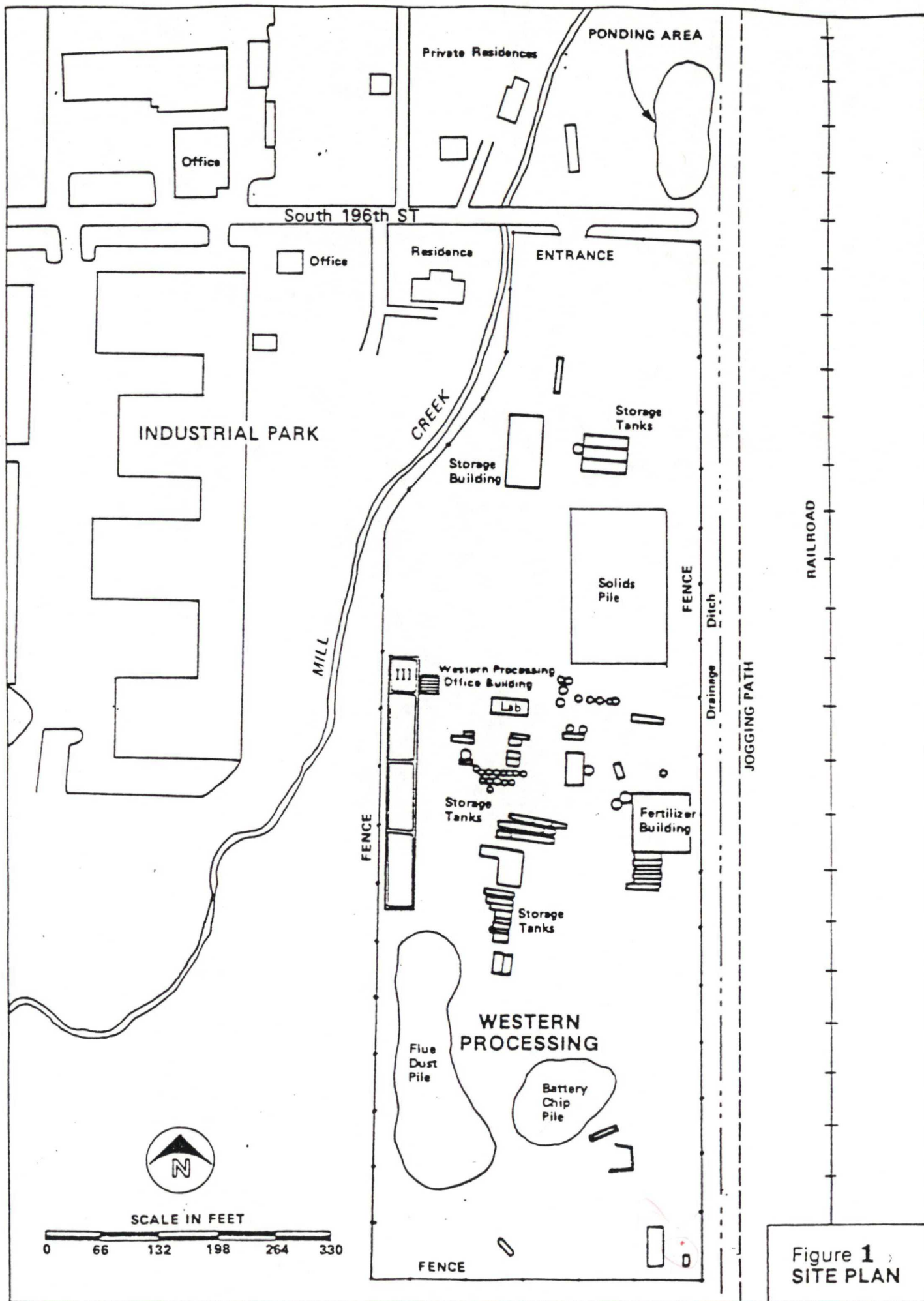


Figure 1
SITE PLAN

Present Status

Hazardous wastes which are directly exposed to the environment remain on site. During the rainy season, which commences in October, stormwater on site will become contaminated by contact with metals and other chemicals. If not controlled, contaminated stormwater will flow into Mill Creek, which borders the site to the northwest and drains the site to the south. Further pollution will result when contaminated stormwater infiltrates the site and increases groundwater contamination.

Project Description

The Western Processing site has been stabilized under the direction of EPA Region X and the Washington State Department of Ecology. The purpose of the IRM is to control surface drainage with interim measures to limit the spread of hazardous materials from various locations on the Western Processing site. The proposed measures are expected to function through two winters (1983-84 and 1984-85) and be replaced with permanent remedial measures by the end of 1985. The primary components of the proposed measures include containment berms and an impervious cover. Berms would be used to contain either contact water or potential hazardous substances. The impervious materials would cover the ground surface and hence prevent contamination of the groundwater system. Treatment of contact waters was evaluated and determined to be too expensive to be a viable alternative.

PROGRAM PROVISIONS

During the course of the initial remedial action covered in this cooperative agreement, the State provides the following to comply with statutory requirements, regulations and guidance promulgated by the federal Superfund program.

1. CERCLA Section 104 (c) (3) Assurances

a. O & M

Pursuant to CERCLA section 104 (c) (3) (A), the State will provide 10% of operation and maintenance costs (O & M) of the remedial construction action provided under this Agreement for two years.

2. Fund Balancing

CERCLA section 104 (c) (4) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare, and the environment against the availability of amounts from the Fund to respond at other sites. If the State requests CERCLA funding for response activities at the site, EPA will evaluate the request against available Fund monies. The State acknowledges that award of this Cooperative Agreement does not commit EPA to future funding for response actions at the site.

3. National Contingency Plan

All activities conducted under this Cooperative Agreement will be consistent with the revised National Contingency Plan (NCP), 40 CFR 300, dated July 16, 1982 (47 Federal Register 31180). In addition, future requests for Fund monies will also be developed in accordance with this regulation.

4. Duties of the State and Regional Project Officers

The State Project officer agrees to assure that schedules and reporting requirements are met.

The EPA Project Officer will conduct periodic reviews and visits to evaluate project activities to assure compliance with applicable EPA requirements and regulations.

5. Site Access and Permits

The State agrees to satisfy all Federal, State, and local requirements, including permits and approvals, necessary to complete the response actions. The State will provide access to EPA employees and contractors at all reasonable times.

6. Community Relations

A final Community Relations Plan must be in place prior to the initiation of any field activities at the site. The plan must be consistent with the current Superfund community relations policy dated May 9, 1983.

7. Site Safety Plan

A final safety plan shall be prepared for activities performed pursuant to the Cooperative Agreement. It shall be approved by the EPA Regional Site Project Officer and shall be consistent with the requirements of CERCLA section 104(f), EPA's Occupational Health and Safety Manual, and other applicable EPA safety guidance provided by the EPA Project Officer. As a condition to awarding contracts to any person to engage in response actions, the State shall require contractors and subcontractors to comply with the developed safety plan and all relevant Federal health and safety standards.

8. Access to Files

At EPA's request, the State shall make available to EPA any information in its possession concerning the site. If any such information has been submitted to the State with a claim of confidentiality, the State Director shall not certify such records as confidential pursuant to RCW 42.21A.160 and will transfer the records to EPA so long as EPA assures that such records will be kept in confidence by EPA in accordance with 40 CFR 2. It is understood, however, that Washington Public Records Act, Chapter 43.17 RCW, allows persons to restrict the disclosure of agency records in limited instances. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the State advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice. In addition, the State will allow public access to its records in accordance with applicable State law. EPA will allow public access to its records in accordance with the procedure established under the Freedom of Information Act (Public Law 93-502) and regulations promulgated pursuant thereto. Both parties agree to protect each other's claims for confidentiality, particularly with regard to documents related to pending or ongoing enforcement actions generated by either the State or EPA.

9. Reporting Requirements

The State agrees to submit progress reports to the EPA Project Officer at quarterly intervals commencing at the start of the project. These reports shall include itemization of expenditures (to date and since the previous report) by object class and by each task/activity in the Statement of Work (SOW); estimates (percentages) of work completed for each activity in the SOW, including a description of the basis for the estimates; and estimated variances (cost and time) expected at project completion.

10. Submission of Documents

The State agrees to submit all final plans, reports, and/or recommendations to the EPA Project Officer for review and concurrence prior to issuance or implementation. Final contract documents, plans, or specifications, and contract changes, shall be submitted to the EPA Project Officer for review, as provided in 40 CFR 33.110 (b) (2).

11. Responsible Party Activities

If, during the period of this Agreement, responsible parties agree to perform, or pay for the performance of, any activities included in the SOW, EPA and the State agree to jointly negotiate any necessary modifications to this Agreement. If appropriate, this Agreement may be amended to adjust the State's letter of credit and SOW accordingly.

Provision for performance of site work by a responsible party: EPA has determined that participation in a response action at a site by a potential responsible party could create an organizational conflict of interest (i.e., the contractor would be placed in a position where its interests as a potential responsible party would conflict with its ability to properly perform the work or would otherwise adversely affect State or Federal enforcement action). Therefore, the State shall require a bidder or offeror on any contract funded under this Cooperative Agreement to provide, with its bid or proposal: (1) information on its status and the status of parent companies, subsidiaries, affiliates and subcontractors as potential responsible parties at the site; (2) certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; (3) a statement that it shall immediately disclose any such information discovered after submission of its bid or proposal, or after award. The State shall evaluate such information and may exclude any bidder or offeror who is a potential responsible party at the site if the State determines the bidder's or offeror's conflict of interest is significant and cannot be avoided or otherwise resolved.

12. Emergency Response Action

Any emergency response activities conducted pursuant to the National Contingency Plan, 40 CFR section 300.65, shall not be restricted by the terms of this Agreement. EPA and the State may jointly suspend or modify the remedial activities in the SOW of this Agreement during and subsequent to necessary emergency response actions.

13. Negation of Agency

Nothing contained in this Agreement shall be constructed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures or protocols prescribed in this Agreement to be followed by the State during the performance of its

obligations under this Agreement are for assurance of the quality of the final product of the actions contemplated by this Agreement, and do not constitute a right to control the actions of the State. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Agreement, and the State (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter related to the subject matter of this Agreement. Neither EPA nor the State shall be liable for the contracts, acts, errors or omissions of the agents, employees or contractors of the other party entered into, committed or performed with respect to or in the performance of this Agreement.

14. Enforcement

a. Notice of Intent to Settle or Initiate Proceedings

EPA and the State agree that, with respect to the claims that each may be entitled to assert against any third person (herein referred to as the "responsible party," whether one or more) for reimbursement of any services, materials, monies, or other thing of value expended by EPA or the State for response activity at the site described herein, neither EPA nor the State will enter into a settlement with or initiate a judicial or administrative proceeding against a responsible party for the recovery of such sums except after having given notice in writing to the party to this Agreement not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither party to this Agreement shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.

b. Cooperation and Coordination in Cost Recovery Efforts

EPA and the State agree that they will cooperate and coordinate in efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potential third parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation.

c. Judicial Action in U.S. District Court

EPA and the State agree that judicial action taken by either party against a potentially responsible party pursuant to CERCLA for recovery of any sums expended in response actions at the site

described herein shall be filed in the United States District Court for the judicial district in which the site described in this Agreement is located; or in such other judicial district of the United States District Court as may be authorized by section 113 of CERCLA, and agreed to in writing by the parties of this Agreement.

d. Litigation Under CERCLA Sections 106 and 107

The award of this Agreement does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under sections 106 or 107 or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or any other statutory provision or common law.

e. Sharing Recovered Funds with EPA

Any recovery achieved by the State pursuant to settlement, judgment or consent decree or any action against any of the responsible parties will be shared with EPA in proportion to EPA's contribution to the site response activities under CERCLA.

f. Sharing Recovered Funds with State

Any recovery achieved by the EPA pursuant to settlement, judgment or consent decree or any action against any of the responsible parties will be shared with the State in proportion to the State's contribution to the site response activities under CERCLA.

| | |
|----------------|---|
| 33.235 | <u>PROFITS</u> - System procedures must allow only fair and reasonable profits to contractors. |
| 33.240 | <u>SMALL, MINORITY, WOMEN'S, AND LABOR SURPLUS AREA BUSINESSES</u> - System must provide for use of these businesses as specified in this section. |
| 33.250 | <u>DOCUMENTATION</u> - System must require that procurement records and files for purchases over \$10,000 include items specified in this section. |
| 33.255 | <u>SPECIFICATIONS</u> - System procedures for establishing specifications for products or services to be procured must meet requirements of this section. |
| 33.265 | <u>BONDING AND INSURANCE</u> - System procedures and requirements related to bonding and insurance must meet requirements of this section. |
| 33.270 | <u>CODE OF CONDUCT</u> - System must have a written code or standards of conduct meeting the requirements of this section. |
| 33.275 | <u>FEDERAL COST PRINCIPLES</u> - System procedures for determining allowable costs must comply with the cost principles specified in this section. |
| 33.285 | <u>PROHIBITED TYPES OF CONTRACTS</u> - System may not allow use of cost-plus-percentage-of cost (multiplier) or percentage-of-construction-cost types of contracts. |
| 33.290 | <u>COST AND PRICE CONSIDERATIONS</u> - System procedures must allow for consideration of cost and price as required in this section. |
| 33.295 | <u>LOWER TIER SUBAGREEMENTS</u> - System must provide that subagreements below the first tier comply with all provisions specified in this section. |
| 33.305-310 | <u>SMALL PURCHASE</u> - System small purchase procedures must meet requirements of these sections. |
| 33.405-435 | <u>FORMAL ADVERTISING</u> - System procedures related to formal advertising, including those for bidding documents and contract awards, must meet the requirements of these sections. |
| 33.505-535 | <u>COMPETITIVE NEGOTIATION</u> - System procedures for competitive negotiation must meet the requirements of these sections. |
| 33.605 | <u>NONCOMPETITIVE NEGOTIATION</u> - System procedures for noncompetitive negotiation must meet the requirements of this section. |
| SUBPARTS C - G | SYSTEM MUST COMPLY WITH REQUIREMENTS IN THESE SUBPARTS: |
| C | <u>CLEAN WATER ACT REQUIREMENTS</u> - Subpart applies to procurement under assistance agreements for construction of treatment works under the Clean Water Act. |
| D | <u>REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT ORGANIZATIONS</u> - Subpart describes the procurement requirements for nonprofit organizations. |
| E | <u>REQUIREMENTS FOR RECIPIENTS OF REMEDIAL ACTION COOPERATIVE AGREEMENTS UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980</u> - Subpart describes the additional procurement requirements for recipients of these cooperative agreements. |
| F | <u>SUBAGREEMENT PROVISIONS</u> - Subagreements for procurement under EPA Assistance must contain the appropriate clauses, or their equivalent, specified in this subpart. |
| G | <u>PROTESTS</u> - Subpart applies to all applicants for EPA assistance except for nonprofit organizations. |

PROCUREMENT SYSTEM CHECKLIST

Form Approved
OMB No. 2000-0453
Expires 4-84

SECTION I - INSTRUCTIONS

This form must accompany each application for EPA Assistance. If the applicant has certified its procurement system to EPA within past two years and the system has not been substantially revised, complete Part A in Section II, then sign and date the form. If the system has not been certified within the past two years, complete Part B.

SECTION II - CERTIFICATION

A. I affirm that the applicant has within the past two years certified its procurement system to EPA as complying with 40 CFR Part 33 and that the system has not been substantially revised. The date of the applicant's latest certification is: MONTH/YEAR

B. Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: (Check one of the following:)

- ☐ 1. CERTIFY that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 including the attached subparts before undertaking any procurement action with EPA assistance.

Please furnish citations to applicable State or local ordinances and regulations.

- ☒ 2. DO NOT CERTIFY. The applicant will follow the requirements of 40 CFR Part 33 with EPA review and preaward approval of proposed procurement actions that will use EPA assistance.

| TYPED NAME & TITLE OF CHIEF EXECUTIVE OFFICER | SIGNATURE | DATE |
|---|--|---------|
| Donald W. Moos Director |  | 2/15/83 |

Below is a list of subparts and sections of 40 CFR Part 33 which contain some but not all of the requirements for procurements under EPA assistance. The purpose of this list is to assist in the evaluation of the applicant's procurement system to determine if it is certified and meets the basic procurement principles as articulated in Part 33. As such, this list highlights certain aspects of the regulations which the recipient shall use in its evaluation process and is not intended to replace a detailed reading of Part 33.

| PART 33 REFERENCE | SECTION TITLE - SUMMARY OF REQUIREMENTS |
|----------------------|---|
| 33.210 | <u>SUBAGREEMENT ADMINISTRATION</u> - System must ensure that contractors perform in accordance with all applicable contract requirements. |
| 33.220 | <u>LIMITATION ON RECIPIENT AWARD</u> - System must consider listed factors in determining contractor responsibility. |
| 33.230 | <u>COMPETITION</u> - System must have procurement transaction procedures that provide maximum open and free competition. |

APPENDIX A

ATTORNEY GENERAL

CERTIFICATION LETTER



OFFICE OF THE ATTORNEY GENERAL

Ken Eikenberry, Attorney General
Temple of Justice, Olympia, Washington 98504

November 8, 1983

Mr. Donald W. Moos
Director
Department of Ecology
Mail Stop: PV-11
Olympia, Washington 98504

Re: Draft Cooperative Agreement Between
U.S. Environmental Protection Agency
and State of Washington
--Western Processing Company Site

Dear Director Moos:

This letter is written in response to your staff's memorandum dated September 26, 1983, concerning the Western Processing Company, Inc. IRM project. The question you asked, as we understand it, is whether the Department of Ecology has authority to enter into the draft cooperative agreement which we reviewed by this office on November 7, 1983. We answer this question in the affirmative, subject to the analysis below. We must add that this letter represents our personal opinions and does not purport to be a formal opinion of the Attorney General's Office. We should also add that the final draft cooperative agreement should be reviewed and approved as to form by this office consistent with your Department's policy.

The November 7, 1983 draft cooperative agreement which we have reviewed provides, in essence, for construction of temporary stormwater containment facilities which will be effective for at least two years at the Western Processing Company site in Kent, Washington, with requisite state assurances to EPA, and state/EPA cost-sharing. This draft cooperative agreement is proposed in order to comply with the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), section 104(c)(3). Under CERCLA, EPA is authorized to provide federal funds for work necessary to remedy the release of hazardous substances into the environment. Prior to the commitment of federal funds,

Donald W. Moos

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November 8, 1983

however, EPA and the affected state must make an agreement providing certain assurances, and for cost-sharing. CERCLA § 104(c)(3). We understand that the November 7th draft cooperative agreement is intended to satisfy the requirement for a state/EPA agreement.

A cooperative agreement is authorized by the following Washington statutes. Laws of Washington, 1983, chapter 270, section 3, provides that:

The Department of Ecology is authorized to participate fully in and is empowered to administer all programs of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et. seq.), as it exists on the effective date of this act, contemplated for state participation and administration under that act.

Laws of Washington, 1983 1st Ex. Sess., chapter 65, section 6(2) and 6(3), which provide that:

The department is authorized to participate in and is empowered to carry out all programs of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 contemplated for state participation or administration under that act.

In relation or addition to the powers set forth in this section and any other provisions of this code, the department is empowered, with regard to the regulation, control, or removal of hazardous substances and wastes, as follows:

(a) To coordinate responses to hazardous substances accident and spill incidents;

(b) To respond to, direct, or initiate cleanup of hazardous substances, accidents and spills, and hazardous waste sites;

(c) To conduct or contract for professional technical data gathering and analysis and damage assessment; and

(d) To conduct or contract for the removal of hazardous substances and wastes where there has been or is a potential for release, regardless of quantity or concentration, which could pose a threat to public health or the environment.

In addition the Department of Ecology received a direct appropriation of funds from the 1983 Legislature for projects such as proposed at the Western Processing Company, Inc. site. See, Laws of Washington, 1983 1st Ex. Sess., chapter 65, section 12.

There is appropriated to the department of ecology from the general fund for the biennium ending June 30, 1985, the sum of four million three hundred thousand dollars, or so much thereof as may be necessary, to administer the purposes of section 1(2)(d) through (f) of this act.

And see, Laws of Washington, 1983 1st Ex. Sess., chapter 65, section 1(2)(d) through 1(2)(f), which provide that

The purposes of this chapter are, among others: . . .

(d) to provide for the cleanup and restoration of those sites within the state at which improper disposal of hazardous waste has occurred, resulting in the potential for deleterious impacts on the health and welfare of the citizens

Donald W. Moos

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November 8, 1983

of the state, as well as the state's natural, environmental, and biological systems, (e) to provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of hazardous waste deposited improperly at sites located within the state, and (f) to provide funds for matching purposes for participation in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

We trust that this is of some assistance to you. We would be pleased to provide further assistance in this matter at your request.

Very truly yours,

Charles B. Roe, Jr.
Senior Assistant Attorney
General


Charles K. Douthwaite
Assistant Attorney General
(206)459-6155

CKD:sac

APPENDIX B

COMMUNITY RELATIONS

PLAN

COMMUNITY RELATIONS PLAN

The community relations plan for the Western Processing site is being prepared by the U.S. Environmental Protection Agency (EPA). The plan will contain the community relations assessment, which presents the site background and discusses the objectives and techniques of the community relations plan. Also included will be a work plan, personnel allocations and implementation schedule.

Since the IRM is only a small portion of the overall remedial action, WDOE does not feel it is necessary to duplicate the efforts of EPA in developing a separate community relations plan for the IRM. Community relations activities have already been conducted as part of the IRM project including a public meeting on September 26, 1983, in Kent. At the meeting, the IRM alternatives were presented and discussed. A responsiveness summary was prepared by EPA and WDOE.

Because public meetings will be scheduled for the Alternatives Analysis Study, no additional meetings specifically for the IRM project are necessary. Status of the IRM project can be presented at the meetings to be scheduled for the on-site and off-site Alternatives Analysis and through news releases.

APPENDIX C

A-95 REVIEW PROCESS

PSCOG

Grand Central on the Park • 216 First Avenue South • Seattle, WA 98104 • 206/464-7090

Puget Sound Council of Governments

September 13, 1983

SEP 13 14 34 '83

Department of Ecology
Mail Stop PV-11
Olympia, Washington 98504

Subject: WAIVER OF A-95 REVIEW

PROJECT TITLE:

Initial Remedial Measure - Western Processing Site

GRANT REQUEST:

\$483,100

FEDERAL AGENCY:

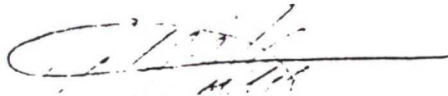
Environmental Protection Agency

Dear Mr. Hunter:

In accordance with OMB Circular A-95, Part I, Paragraph 8(f), the PSCOG has determined that A-95 review of the subject project by the Areawide Clearinghouse is not necessary. This waiver of review is also recognized by the State Clearinghouse.

You may now submit your completed application with a copy of this letter to the funding agency.

Sincerely,



Mart Kask, Executive Director
Puget Sound Council of Governments

APPENDIX D

PRE-AWARD DEVIATION

REQUEST FROM

40 CFR PART 30.308

JOHN SPELLMAN
Governor



DONALD W. MOOS
Director

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Mail Stop PV-11 • Olympia, Washington 98504 • (206) 459-6000

November 10, 1983

Mrs. Ernesta B. Barnes
Regional Administrator
U.S. Environmental Protection Agency
Region X
1200 Sixth Avenue
Seattle, WA 98101

Dear Mrs. Barnes:

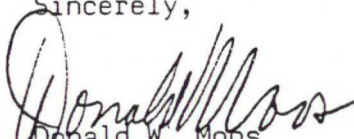
The department has chosen to take the lead on implementing an Initial Remedial Measure (IRM) for stormwater surface drainage control at the Western Processing site in Kent, Washington.

The primary purpose of the IRM is to control surface drainage with interim measures to limit the spread of additional hazardous substances from various locations on the Western Processing site. The measures are expected to function through two winters (1983-1984 and 1984-1985), and are anticipated to be replaced with permanent remedial measures by the end of 1985.

The immediate problem facing the Western Processing site is that stormwater from rains will become contaminated by contacting metals and other chemicals that are throughout the site. The EPA emergency removal completed July 1, 1983 has increased the potential for contamination of rainwater because of the surface disturbances resulting from the removal. Contact stormwater infiltration will increase ground water contamination because of the high levels and quantities of pollutants in the surface soils.

Because it is necessary to expedite the implementation of the IRM before major rains inundate the site in November, I am requesting a deviation from 40 CFR Part 30.308 to accelerate the project and allow the state to incur costs at the site prior to award of the cooperative agreement. We look forward to your quick approval of this deviation request so that the IRM will have a meaningful environmental result.

Sincerely,


Donald W. Moos
Director

DWM:js

cc: Chuck Findley
Judi Schwarz